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Hon. Lewis A. Kaplan
United States District Judge
United States Courthouse
500 Pearl Street, Room 1310
New York, NY 10007

USDS SDNY	February 19, 2008
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Re: Jacoby v. Hartford Life and Accident Insurance Company
07 Civ 4627 (LAK)(RLE)

Dear Judge Kaplan:

We are counsel to plaintiff in the above-referenced action. We write with respect to the order issued by the Court on February 14, 2008 denying without prejudice plaintiff's motion to Declare Unconstitutional the Arbitrary and Capricious Standard of Review and to Grant Plaintiff a De Novo Plenary Proceeding.

The motion was denied because it did not properly seek judgment on the pleadings or summary judgment. We, however, did not intend that the motion be treated as a dispositive motion. Rather, we intended the motion to establish the procedure that will be applied at trial. Because there is a material factual dispute as to plaintiff's total disability, we believe that the case is not appropriate for a dispositive motion.

We believe that addressing the issue now could avoid a time consuming summary judgment motion on the part of defendant and will facilitate the filing of a pretrial order that takes into account the scope of the trial that the Court deems appropriate.

We therefore request that the Court hear plaintiff's motion in its present form. If not, we seek the Court's direction on when plaintiff should present the issues outlined in our brief to the Court for resolution.

Respectfully yours,
Scott M. Riemer
Scott M. Riemer

cc: Christina Bost Seaton, Esq.

MEMO ENDORSED
Planned
SO ORDERED
LEWIS A. KAPLAN, USDJ 2/22/08